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*Beverly L. Smith*

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ATTORNEYS FOR APPELLEE:

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 Kopka, Pinkus, Dolin & Eads, P.C.  
 Crown Point, Indiana

ROBIN BURMEISTER, )  
)  
Appellant-Plaintiff, )  
)  
vs. ) No. 93A02-0711-EX-968  
)  
MIDWEST LOGISTICS a/k/a )  
STAFFING SERVICES, INC., )  
)  
Appellee-Defendant. )

**April 17, 2008**

**NAJAM, Judge**

## **STATEMENT OF THE CASE**

Robin Burmeister appeals from the Worker's Compensation Board's ("the Board's") dismissal of her Application for Adjustment of Claim ("Claim"). Burmeister presents a single issue for our review, namely, whether the Board erred when it determined that her alleged injuries did not occur either in the course or in the scope of her employment with Midwest Logistics ("Midwest").

We affirm.

## **FACTS AND PROCEDURAL HISTORY**

On June 15, 2005, Burmeister filed her Claim. On January 31, 2007, the parties filed a joint submission with stipulated facts and attached deposition testimony. Specifically, the parties stipulated to the following facts:

1. On March 21, 2005, [Burmeister] was a Sales Representative for [Midwest].
2. As a Sales Representative for [Midwest], [Burmeister's] territory included, in part, the southern half of Michigan and parts of Northern Indiana.
3. [Burmeister's] job was selling trucking loads.
4. As[] a Sales Representative for [Midwest] usually [Burmeister] scheduled herself to be away from home on Mondays, Tuesdays and Wednesdays.
5. [Burmeister] would typically make sales calls on Thursdays and work out of [Midwest's] office on Fridays.
6. When [Burmeister] was away from home selling for [Midwest], [Midwest] paid for her motel room.
7. [Burmeister] usually stayed at the Holiday Inn Express when she was away from home on the business of [Midwest].

8. On March 21, 2005, [Burmeister's] home was in Mishawaka, Indiana.

9. On March 21, 2005, [Burmeister] was staying at a Holiday Inn Express in Grandville, Michigan.

10. Grandville, Michigan[,] is immediately southwest of Grand Rapids, Michigan.

11. March 21, 2005[,] was a Monday.

12. [Burmeister] alleges that on Monday, March 21, 2005, she went to the Holiday Inn Express in Grandville, Michigan, made a few business calls, watched some television, and ran on the treadmill for thirty (30) minutes before swimming in the Holiday Inn Express pool for more than thirty (30) minutes.

13. [Burmeister] alleges that after she got out of the pool, [she] took a bath in the Jacuzzi, did paperwork, checked e-mails, watched TV and went to bed.

14. [Burmeister] contends that she woke up about 2:00 a.m. on March 22, 2005, with symptoms that included headache, sore throat, shortness of breath and inability to speak well.

15. [Burmeister] claims that her symptoms are a direct and proximate result of an excessive amount of Bromine put in the pool by hotel staff.

Appellant's App. at 10-11. Burmeister checked into the hotel between 9:00 and 10:00 in the morning.

The attached depositions included the testimony of Randy Scamehorn, the Vice President of Operations for Midwest. Attached to Scamehorn's deposition was Burmeister's employment file, which showed that Burmeister had been hired by Midwest in early January of 2005. Scamehorn testified that Burmeister's alleged injuries occurred while she was still on probationary employment. Scamehorn also stated that he would not have expected an employee to get a hotel room near Grand Rapids "because that's an

hour-and-a-half, two-hour drive home.” Appellee’s App. at 81. However, Scamehorn believed “there was a connection between [Burmeister’s] marital problems and stays at hotels.” Id. at 82-83. Further, Scamehorn testified that Burmeister had not submitted, contrary to Midwest’s requirements, a tentative or follow-up schedule or customer rate requests for the week of March 21, 2005. Midwest used those documents “as a means to track what the sales representatives were doing during the week.” Id. at 83-84.

On May 3, 2007, a Single Hearing Member of the Board issued an order denying Burmeister her requested relief. In that order, the Single Hearing Member adopted the parties’ stipulated facts and then concluded that “the Single Hearing Member does not feel Plaintiff was injured while in the course of [sic] scope of employment.” Appellant’s App. at 8. On May 17, 2007, Burmeister filed an application for review by the Full Board. On August 23, the Board held a hearing, and on September 27 the Board adopted the Single Hearing Member’s ruling. This appeal ensued.

### **DISCUSSION AND DECISION**

When reviewing the decisions of the Board, we are bound by the factual determinations of the Board and may not disturb them unless the evidence is undisputed and leads inescapably to a contrary conclusion. Eads v. Perry Twp. Fire Dep’t, 817 N.E.2d 263, 265 (Ind. Ct. App. 2004), trans. denied. All unfavorable evidence must be disregarded in favor of an examination of only that evidence and the reasonable inferences therefrom which support the Board’s findings. Id. Moreover, we neither reweigh the evidence nor judge the witness’s credibility. Id. We review questions of law

de novo. Prentoski v. Five Star Painting, Inc., 827 N.E.2d 98, 101 (Ind. Ct. App. 2005), aff'd in part, adopted in part, 837 N.E.2d 972 (Ind. 2005).

Here, the evidence most favorable to the judgment demonstrates that Burmeister was at the Grandville Holiday Inn Express for personal reasons, not for business. Again, Scamehorn testified that Burmeister had not documented with Midwest any itineraries, schedules, or customer rate requests, as required, for the week of March 21, 2005. Any of those documents would have verified Burmeister's contention that she was traveling for business purposes and that she met with or made calls to Midwest customers. Neither does the record disclose the names of any clients or customers she contacted on that date. Scamehorn also stated that he would not have expected an employee to get a hotel room at a driving time of three hours or less from home, and that Midwest was concerned that Burmeister was abusing Midwest's hotel-reimbursement policies to avoid marital conflicts.

In light of that evidence, we must affirm the Board's conclusions. Again, our review requires this court to consider only the evidence and reasonable inferences therefrom that support the Board's decision. See Eads, 817 N.E.2d at 265. And here, the evidence supports the inference that Burmeister checked into the Grandville hotel early on Monday morning for personal reasons rather than for business. Accordingly, the injuries she suffered at that hotel could not have arisen out of and in the course of her employment. See Lutz v. DeMars, 559 N.E.2d 1194, 1197 (Ind. Ct. App. 1990) (noting that a traveling employee is not acting in the course or scope of business when the employee "embarks on a purely personal errand"). Burmeister's argument on appeal that

she was at the hotel for business reasons amounts to a request for this court to reweigh the evidence, which we will not do. See Eads, 817 N.E.2d at 265.

Affirmed.

SHARPNACK, J., and DARDEN, J., concur.